



## INVITATION TO BID

City of Hampton

ISSUING OFFICE:

DATE: July 26, 2016

Consolidated Procurement Div.  
1 Franklin Street, Suite 345  
HAMPTON, VA 23669  
TELEPHONE: (757) 727-2200  
FAX: (757) 727-2207

Attention of Bidder is Directed To Section  
2.2-4367 to 2.2-4377 Code of Virginia  
(Ethics In Public Contracting)

ITB ITEM NO.  
2017-10TM

PROCUREMENT OFFICER  
Tammy Martin, Buyer

OPENING DATE  
August 18, 2017

OPENING TIME  
2:00 PM EST

**PREBID CONFERENCE**  
**NONMANDATORY**  
DATE August 3, 2016  
TIME: 10:30 AM EST  
Meet in the Coliseum Lobby

**SEALED BIDS** will be received in the Issuing Office above until Opening Date and Opening Time as specified in this solicitation including any addenda issued by this office. The City of Hampton is not responsible for late delivery by U.S. Postal mail or other couriers. All inquiries for information regarding this Invitation to Bid are to be directed to the Issuing Office as defined herein.

**COMMODITY: Repairs and Upholstery Service to 750 fixed Auditorium Chairs**  
**NIGP CODE: 928.91**

PLEASE FILL IN OFFEROR'S NAME & ADDRESS  
IN THE SPACES PROVIDED BELOW:

**THIS IS NOT AN ORDER**

THE CITY OF HAMPTON HEREAFTER REFERRED TO AS THE "CITY", RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL BIDS IN WHOLE OR IN PART AND WAIVE ANY INFORMALITIES IN THE BIDDING PROCESS. FURTHER, THE CITY RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN ITS BEST INTEREST. THE ENTIRE CONTENTS OF THE INVITATION TO BID, ANY ADDENDA, BIDDERS RESPONSE AND ANY CHANGE ORDERS SHALL BE INCORPORATED BY REFERENCE INTO ANY RESULTING CONTRACT.

**THE CITY OF HAMPTON DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.**

The City of Hampton is seeking bids from responsible and responsive bidders to provide Repairs and Upholstery Service to 750 Fixed Auditorium Chairs.

**ACKNOWLEDGE RECEIPT OF ADDENDUM: #1\_\_\_ #2\_\_\_ #3\_\_\_ #4\_\_\_ (Please Initial)**

THE CITY OF HAMPTON CANNOT LEGALLY AGREE TO ANY CLAUSE INDEMNIFYING THE CONTRACTOR FROM ANY DAMAGES ARISING OUT OF THE CONTRACT OR HOLDING THE CONTRACTOR HARMLESS. THE SUBMISSION OF A BID CONSTITUTES AN AGREEMENT BY THE CONTRACTOR NOT TO REQUEST SUCH LANGUAGE IN THE RESULTING CONTRACT. IN COMPLIANCE WITH THIS SOLICITATION AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED AGREES TO PERFORM ANY CONTRACT AWARDED AS A RESULT OF THIS SOLICITATION. THE FOLLOWING SECTION SHALL BE SIGNED BY AN AGENT AUTHORIZED TO BIND THE COMPANY. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN BID REJECTION.

Authorized Agent:

Signature

Type or Print Name

Email Address  
ENCLOSURES

Telephone Number

Fax Number

Company FEI/FIN#

City of Hampton

ITB 2017-10TM

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## **ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE REQUIREMENTS**

### **ANTI-COLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID BIDDER DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED BIDDER HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, CITY HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS PROPOSAL; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS PROPOSAL.

### **DRUG-FREE WORKPLACE:**

DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE SUCCESSFUL BIDDER'S EMPLOYEES; (II) POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, A STATEMENT NOTIFYING EMPLOYEES THAT THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE OR MARIJUANA IS PROHIBITED IN THE SUCCESSFUL OFFEROR'S WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION; (III) STATE IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL OFFEROR THAT THE SUCCESSFUL OFFEROR MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING CLAUSES IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUCCESSFUL OFFEROR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A SUCCESSFUL OFFEROR IN ACORDANCE WITH FEDERAL LAW, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE CONTRACT.

### **EMPLOYMENT DISCRIMINATION BY THE SUCESSFUL OFFEROR SHALL BE PROHIBITED:**

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES AS FOLLOWS:
  - a. THE BIDDER, SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS A BONA FIDE OCCUPATIONAL QUALIFICATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE SUCCESSFUL OFFEROR. THE SUCCESSFUL BIDDER AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
  - b. THE SUCCESSFUL BIDDER, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL BIDDER, SHALL STATE THAT SUCH SUCCESSFUL BIDDER IS AN EQUAL OPPORTUNITY EMPLOYER.
  - c. NOTICES, ADVERTISEMENTS, AND SOLICITATIONS PLACED IN ACORDANCE WITH FEDERAL LAW, RULE OR REGULATION SHALL BE DEEMED SUFFICIENT FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF THIS SECTION.
2. THE SUCCESSFUL BIDDER WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

**Name and Address of BIDDER:**

Date: \_\_\_\_\_ Authorized Signature \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Federal Tax Identification Number/Social Security Number:** \_\_\_\_\_

Is Bidder a "minority" business? ☐ Yes ☐ No

☐ African American ☐ Hispanic American

If yes, please indicate the "minority" classification below:

☐ American Indian ☐ Eskimo ☐ Asian American ☐ Aleut ☐ Other; Please Explain:

Is Offeror Woman Owned? ☐ Yes ☐ No

Is Offeror a Small Business? ☐ Yes ☐ No

Is Offeror a Faith-Based Organization? ☐ Yes ☐ No

## **I. SCOPE OF WORK**

### **General Requirements:**

The City of Hampton is seeking bids to provide and install upholstered components for 750 fixed auditorium chairs with upholstered seats and upholstered backs.

### **Specific Requirements:**

Contractor shall perform services to the highest standards in the upholstery industry.

## **1.1 DESCRIPTION OF WORK**

- A. **SCOPE:** Provide and install upholstered components for 750 fixed auditorium chairs with upholstered seats and upholstered backs to include:

### **I. PREPARATION AND PLANNING**

1. Prepare a detailed survey of chairs to include drawings and detailed site measurements, prior to starting work, showing the existing installation of seating, including individual chair sizes.

- II. **REMOVE** the existing chair upholstery components as needed, in the auditorium using a factory trained and approved installation contractor.

### **III. RENOVATE** the chairs according to the bid specifications.

1. All removal and re-install work is to be performed at the job site working within the schedule of the facility.
2. Remove only the quantity of backs and seats that can be completed during one scheduled shift.
3. All tools, upholstery materials, removed covers, and packaging must be removed from the Coliseum at the end of each shift.

### **IV. INSTALL** upholstered components in the same chair sizes that they were removed from, utilizing new attachment hardware.

1. The seating survey shall be followed and all chair sizes checked against the inventory.
2. Employ a trained installation sub-contractor capable of demonstrating certification for installation by the renovation materials manufacturer.
3. Remove all work related debris from premises and clean work area daily.

### **V. SCHEDULE OF COMPLETION**

1. Installation work shall be completed within 120 days.

## **1.2 SUBMITTALS**

A. **SAMPLE COMPONENTS:**

1. Samples of the specified replacement upholstery fabric matching the detail specifications shall be submitted to the Coliseum for approval at time of bidding.
2. Bidder shall provide at the time of bidding, sample back and seat that shall be fully representative of the product being offered. Sample components submitted by the successful bidder shall be retained as a control sample for judging completed work.

### 1.3 QUALITY ASSURANCE

- A. MANUFACTURER CAPABILITY: Manufacturer of materials to be used are listed below (Sec 2.2) and the following may be required upon demand:
  - 1. Financial Stability - Submit manufacturer's latest financial statement.
  - 2. Recycling Capability - demonstrate ongoing efforts to reduce the manufacturer's carbon foot print by reducing energy consumption and recycling unused materials, office supplies, and packing materials striving for 100% zero landfill.
- B. FIRE PERFORMANCE CHARACTERISTICS OF UPHOLSTERED SEATING: Upholstered components provided shall be manufactured utilizing materials which have been tested and certified as complying with BIFMA Voluntary Upholstered Furniture Flammability Standard F-1-1978 (rev. 1980) sponsored by the Business and Institutional Furniture Manufacturer's Association. Proof of such certification should be provided at the time of bidding.
- C. PRIOR REFERENCES- Bidder shall provide at the time of bidding: a list of three similar restorations within the last five years including reference contact names and numbers.

### 1.4 DELIVERY, STORAGE, AND REINSTALLATION

- A. Deliver and store materials in manufacturer's original packaging. Store the new materials in a protected dry location. Do not open packaging until parts are required for installation.

- 1.5 WARRANTY: Provide a manufacturer's warranty covering new materials furnished, and workmanship, for a period of one year from date of final acceptance.

## PART 2: PRODUCTS

### 2.1 ACCEPTABLE MANUFACTURERS: MATERIALS OR EQUIVALENT

- A. Irwin Seating Company, 3251 Fruit Ridge Ave., Grand Rapids, Michigan 49544
- B. American Seating, [801 Broadway Ave NW, Grand Rapids, MI 49504](#)

### 2.2 MATERIALS AND FINISHES

- A. FABRIC: Upholstery fabric shall be 100% Marquesa Lana bulked continuous filament Olefin yarn, Sherpa or Shire pattern by Absecon Mills, Inc., minimum weight 17.5 oz. per lineal yard (14.4 oz. unbacked), minimum of 13 ends and 13 picks per inch. Fabric shall exhibit superior color fastness, light fastness, tear strength, and break strength and shall be exceptionally resistant to staining, chemicals, and abrasion. Fabric shall meet Class 1 flammability requirements of the U.S. Department of Commerce, Commercial Standard 191-53 per

Bulletin #117 (California Code). Fabrics shall be available in a choice of colors ranging from delicate to vibrant.

- B. **PADDING MATERIAL:** Seat and back padding material shall be of new (prime manufacture) polyurethane foam. Padding material shall comply with the flammability requirements outlined in the California Technical Information Bulletin #117, Resilient Cellular Materials, Section A & D, dated February 1975, when tested in accordance with Federal Test Method Standard 191, Method 5903.2.

## 2.3 RENOVATION OF FIXED AUDIENCE SEATING

- A. Restoration work shall result in a complete, usable auditorium, and shall include but is not limited to the following:
  - 1. Remove the existing and install the replacement upholstered components in the existing backs and seats.
  - 2. Clean all seats and backs at the completion of the installation. All chairs shall be operating properly prior to final acceptance and sign off by the owner.
- B. **UPHOLSTERED BACKS:**
  - 1. The existing inner backs will be replaced with new compound curve, plywood inner backs. A new ISC Plush 30 slab foam pad shall be glued to the new plywood inner panel. The foam pad shall be a minimum of 1.45 +/-0.05 Density, 30 +/-3 IFD Blue polyurethane foam.
  - 2. The new inner panel, with padding, shall be upholstered with a single piece fabric cover using staples, and shall be free of wrinkles, gaps or defects of any kind.
- C. **UPHOLSTERED SEATS**
  - 1. Old seat upholstery covers and foam shall be removed from the seat topper.
  - 2. New, individually molded polyurethane foam pads shall be glued to the seat spring assembly. The molded foam pads shall be prime grade virgin foam with a density of at least 2.9 pounds per cubic foot and compression of at least 36 pounds (I.F.D. – 25%). Molded pads shall be 3 1/2" thick at the front edge, approx. 2" thick at the rear, 1-1/2" thick at the center, with a 1/2" overhang at the front and 1/8" overhangs at the back and sides. A tough, durable, non-woven, non-vegetable chafing barrier shall be molded into the bottom of the new foam cushion to be between the serpentine springs and the foam cushion to protect the foam. Foam pads shall be molded to exactly fit the contours of each size spring unit. Given that seat padding absorbs the greatest flexing and stress in the chair, it shall be unacceptable to mold one size foam pad and trim to fit the various sizes; nor shall slab or die cut foam be permitted.
  - 3. The upholstery covers shall be of side panel construction, back stitched at the seam ends. The upholstery cover shall be secured around the perimeter of the cushion frame by case hardened spring clips which permit ease of re-upholstery. After upholstering, the cover shall be free of wrinkles, gaps or defects of any kind.

4. Vendor is required to accommodate the Coliseum event schedule whereby all 750 seats (any combination of original and reupholstered) are fully functional the day before and the day-of any event day. No work shall occur on Coliseum event days. Any contract work days unavailable due to the schedule of the Coliseum shall be added to the end of the schedule.

#### SPECIAL INSTRUCTIONS TO THE BIDDER Definitions:

##### Issuing Office:

Wherever used in this Invitation to Bid, Issuing Office will be:

Tammy Martin, Buyer  
Consolidated Procurement Division  
Community, Municipal Services/Education  
1 Franklin Street, Suite 345  
Hampton, VA 23669  
Phone: (757) 727-2205  
Fax: (757) 727-2207  
Email: [tmartin@hampon.gov](mailto:tmartin@hampon.gov)

##### City Contract Administrator:

Wherever used in this Invitation to Bid and for purposes of any notices under this contract, CITY Contract Administrator will be:

Kevin Spence, Assistant Director  
Hampton Coliseum  
1000 Coliseum Drive  
Hampton, VA 23669  
757 727- 896-1231 (Phone)  
Email: [kwspace@hampton.gov](mailto:kwspace@hampton.gov)

## II. Bidders of Record

Bidders receiving a copy of this ITB from a source other than the Issuing Office must contact the Issuing Office and provide Bidder's name, address, contact person, telephone and fax number, and the ITB Item Number. Bidder will be added to the bidder's list and will receive notification of any addenda to the ITB. Bidders are encouraged to check [www.hampton.gov/bids-contracts](http://www.hampton.gov/bids-contracts) for any addenda prior to submitting bids.

### Questions

Bidders must submit questions regarding this Invitation to Bid in writing to the Issuing Office at (757) 727-2207 or email [tmartin@hampton.gov](mailto:tmartin@hampton.gov) **no later than 4:30 PM EST, August 9, 2016**. Necessary replies will be issued to all bidders of record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the bid documents.

Offeror is responsible for checking the Hampton/bids-contracts web site or contacting the Issuing Office within 48 hours prior to bid opening to secure any addenda issued for this ITB.

### Late Submissions, Modifications, and Withdrawal of Bid

Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Issuing Office designated in the ITB by the time specified in the ITB.

Any bid, modification, or withdrawal received at the Issuing Office designated in the ITB after the exact time specified for receipt of bids shall be considered "late" and will not be considered unless there is acceptable evidence to establish that it was received at the Issuing Office and was under the control of the City prior to the time set for receipt of bids.

Acceptable evidence to establish the time of receipt at the Issuing Office includes the time/date stamp of that office on the bid wrapper, other documentary evidence of receipt maintained by the office, or oral testimony or statements of Consolidated Procurement Division personnel.

If an emergency or unanticipated event interrupts normal City processes so that bids cannot be received at the Issuing Office by the exact time specified in the ITB and urgent City requirements preclude modifications to the ITB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal City processes resume.

Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a Bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established, a formal written request to withdraw the Bid is submitted on the firm's letterhead, and the person signs a receipt for the bid.

**A withdrawal of bid due to error shall be in accordance with Section 2.2-4330 B (1) of the Code of Virginia.** The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after conclusion of the bid opening procedure and shall submit original work papers with such notice.

#### Preparation of Bids

To be considered for award, a bid must comply in all material respects with the ITB. Bidders are expected to examine the drawings, specifications, and all instructions in this ITB. Failure to do so will be at the Bidder's own risk.

Each Bidder shall furnish the information required by the solicitation. The Bidder is expected to:

- Sign the bid and print or type its name and address on the cover of the ITB;
- Sign the ANTICOLLUSION/NON-DISCRIMINATION on page 2 of this ITB and complete all other information requested on the same page;
- Complete the pricing sheet Attachment A
- Changes must be initialed by the authorized Agent signing the bid. For each lump sum price offered, Bidders must show, in its descriptive literature:
  - (a) Present the amount for the (Requested) equipment in the lump sum price; and
  - (b) Present the amount for labor and all other additional costs included in the lump sum price.

In case of discrepancy between a unit price and an extended price, the unit price shall govern as the correct price.

Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation. Time, if stated as a number of days, will be interpreted to include Saturdays, Sundays, and holidays.

Acknowledge Addenda on page 1 of this solicitation.

#### Descriptive Literature

"Descriptive literature," as used in this provision, means information furnished by a Bidder, such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements including, but not limited to:

Design;

Materials;  
Components;  
Performance characteristics; and  
Methods of manufacture, assembly, construction, or operation.  
Descriptive literature, required elsewhere in this solicitation, must be:  
Identified to show the item(s) of the offer to which it applies; and  
Received by the time specified in this solicitation.

If the Bidder fails to submit required descriptive literature on time with the Bid submittal, the City may reject the bid.

If the descriptive literature fails to show that the product offered conforms to the requirements of the solicitation, the City will reject the bid.

#### **Bid Submittal Requirements**

Bids must be submitted utilizing the following requirements:

Bids shall be placed in a sealed envelope or package, and the envelope or package labeled with the Invitation for Bid's item number and the name and address of the Bidder.

Submit the original and one (1) copy of the Bid. Bidders are encouraged to submit bids on recycled paper and to use double-sided copying.

All bids shall be received and time stamped in the Issuing Office no later than the Closing Date and Time shown on the cover page of this Invitation to Bid. Any bid received after the specified date and time (time stamped 2:01 p.m. or later) shall not be considered and shall be returned unopened to Bidder.

Bids received by telephone, telegraph, email, or facsimile shall not be accepted.

Bids must include all elements noted in the Bid Preparation paragraph above.

Bids should be submitted in the format specified on the Pricing Sheet.

Statement setting forth the basis for protection of proprietary information, if any, as detailed in the ***Proprietary Information/Disclosure*** section.

#### **Bid Opening**

The Issuing Office shall decide when the time set for opening bids has arrived. Bids received before the bid opening time will be publicly opened and, if practical, read aloud to the persons present, recorded and abstracted. Review of the abstract of the bids by interested persons will be permitted immediately after bid opening, as soon as prepared, if it does not unduly interfere with the conduct of City business, as determined by the Issuing Office. Bid records will not be open to public inspection until a formal evaluation and award determination has been made by the Issuing Office.

#### **Contact with City Staff, Representatives, and/or Agents:**

Direct contact with City staff, representatives, and/or agents other than Consolidated Procurement Division staff on the subject of this ITB or any subject related to this ITB is expressly prohibited except with the prior knowledge and permission of the Purchasing Agent or designated representative.

## **I. General Terms and Conditions**

#### **Contract Document:**

This ITB, including all General Terms and Conditions and Special Conditions, its Addenda, and Successful Bidder's bid will constitute the final contract, hereafter referred to as "this Contract". These documents will be incorporated by reference into the City purchase order awarding this Contract.

#### **Bid Binding For Ninety (90) Days:**

Bidder agrees that its bid shall be binding and may not be withdrawn for a period of ninety (90) calendar days after the scheduled opening date of this Invitation for Bid.

#### **Proprietary Information/Non-Disclosure:**

Bidder is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Bidder. Specifically, if Bidder seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, Bidder shall:

1. Invoke the protections of this section prior to or upon submission of the data or other materials,
2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
3. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked "**PROPRIETARY**".



4. Information submitted that does not meet the above requirements will be considered public information in accordance with State statutes.
5. CITY reserves the right to submit such information to the CITY attorney for concurrence of the Bidder's claim that it is in fact proprietary.
6. References to the proprietary information may be made within the body of the Proposal; however, all information contained within the body of the Proposal shall be public information in accordance with State statutes.
7. Trade secrets or proprietary information submitted by a Bidder in conjunction with this ITB is not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA).
8. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.
9. An all-inclusive statement that the entire bid is proprietary is unacceptable. A statement that Bidder's costs and/or Bid pricing are to be protected is unacceptable. Bidder will be requested to remove any such statement(s) in order to be eligible for further evaluation and award.

**Contract Modification(s):**

After award, any and all modifications to this Contract shall be mutually agreed to by both parties, in writing, and authorized by the City Purchasing Agent or his designee via issuance of a change order (purchase order).

**Bidder Obligation:**

Bidder shall carefully examine the contents of this Invitation for Bid and any subsequent addenda. Failure to do so shall not relieve the Successful Bidder of its obligation to fulfill the requirements of any contract awarded as a result of this ITB.

**Conditions of Work:**

Bidder shall inform itself fully of the conditions relating to services required herein. Failure to do so will not relieve a Successful Bidder of the obligation to furnish all goods and/or services necessary to carry out the provisions of this Contract. Once the Contract is awarded, the Successful Bidder shall be referred to as "Contractor".

**Prime Contractor:**

If in its performance of this Contract, Contractor supplies goods or services by or through another party or subcontractor, Contractor agrees that:

1. Contractor shall act as the prime contractor for the goods and services to be provided under contract and shall be the sole point of contact with regard to all obligations under this Contract.
2. Contractor represents and warrants that Contractor has made third parties or subcontractors aware of the proposed use and disposition of the other party's products or services, and that such other party has agreed in writing that it has no objection and that the City is not liable to such third parties or subcontractors for any work performed under this Contract.
3. The use of subcontractors and the work they perform must receive the prior written approval of the City. The City will designate a Contract Administrator to approve such work.
4. Contractor shall be solely responsible for all work performed and materials provided by subcontractors. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor under this Contract.

To obtain payment for work performed under this Agreement, if the Contractor is an individual, the individual Contractor shall provide his social security number. If the Contractor is a proprietorship, partnership, or corporation, the Contractor shall provide its federal employer identification number.

**Subcontractors:**

Contractor's use of subcontractors and the work they are to perform must receive written approval from the Contract Administrator at least ten (10) calendar days prior to the work being performed. Contractor shall be solely responsible for all work performed and materials provided by subcontractors. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor.

**Payments to Subcontractors:**

In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), Contractor shall make payment to all subcontractors, as defined in the Code, within seven (7) days after receipt

of payment from the City; or, shall notify the City and subcontractors in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, Contractor shall pay interest at the rate of one (1) percent per month, unless otherwise provided in the Agreement, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor.

Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the City. An Agreement modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

#### Non-Assignment:

Contractor shall not assign its rights and duties under this Contract without the prior written consent of the City Contract Administrator.

#### Antitrust:

Any perceived anti-trust violation will be reported to the State Attorney General for possible enforcement of anti-trust laws.

#### Anti-collision/Nondiscrimination Requirements Form:

The attached "Anti-collision/Nondiscrimination Requirements" form, on page 2 of this ITB, shall be executed by Bidder and is to be submitted with Bidder's Proposal. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this ITB. A contract will not be awarded to a Bidder who has not signed the Anti-collision/Nondiscrimination Statement.

#### Hold Harmless/Indemnification:

It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any Work required by this Contract. Contractor agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the Work by Contractor or those for whom Contractor is legally liable. Upon written demand by the City, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

#### Notices:

All notices, requests, demands, and elections under this Contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) City business days after the date of mailing when mailed by United States mail, certified mail/return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

To City of Hampton: City Contract Administrator as designated in this ITB.

To Contractor: Contractor's Contract Administrator as defined in Successful Bidder's Bid Response.

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

#### Non-Performance:

1. **Delivery Delays:** the City reserves the right to procure goods and/or services to be provided under this Contract from other sources in the event Contractor fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this Contract.
2. **Unacceptable Deliveries (Rejections):** Upon notification by the City that goods and/or service deliverables provided by the Contractor under this Contract are damaged and/or not of the quality specified by the City, such goods and/or service deliverables will be rejected. Contractor shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by the City.
3. Contractor shall remove all rejected materials, equipment or supplies from the premises of the City within ten (10) days of notification. Rejected goods and/or service deliverables not removed from City's premises

within ten (10) days will be regarded as abandoned, shall become the property of the City, and the City shall have the right to dispose of such items.

4. The City reserves the right to authorize immediate purchase from other sources against rejections.
5. Liability: Contractor shall be liable to the City of Hampton for all costs incurred by the City as a result of Contractor's failure to perform in accordance with this Contract. Contractor's liability shall include, but not be limited to:
  - a. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
  - b. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Contractor and/or rejections of Contractor's goods and/or service deliverables.
  - c. Warranty and rework costs, liability to third party, excess costs, reasonable attorney's fees and related costs incurred by the City due to non-responsive performance of Contractor.

#### Termination without Cause:

The City may at any time, and for any reason, terminate this Contract by written notice to Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract. In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the City, at the time of termination. If the City terminates this Contract, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to the City any work completed or in process for which payment has been made.

#### Termination with Cause/Breach:

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Contract, City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, City may immediately cancel and terminate this Contract as of the mailing date of the default notice. Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to City any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable. This Contract may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this Contract, if that other party has failed to cure that failure or breach within ten (10) days after receipt of written notice thereof from the other party.

#### Breach of Contract:

Contractor shall be deemed in breach of this Contract if the Contractor:

Fails to comply with any terms of this Contract;

Fails to cure such noncompliance within ten (10) calendar days from the date of City written notice or such other time frame,

greater than ten (10) calendar days, specified by the City Contract Administrator in the notice.

Fails to submit a written response to the City's notification of noncompliance within ten (10) calendar days after the date of the City notice.

All notices under this Contract shall be submitted, either by fax or certified mail, return-receipt requested, to the respective contract administrator. Contractor shall not be in breach of this Contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the City of Hampton in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

#### Applicable Law:

This Contract shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

#### Compliance with All Laws:

Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of scope work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and

permits necessary for performance of this Contract prior to the initiation of work. Contractor whether organized as a stock or nonstock corporation, limited liability company, business, trust, or limited partnership or registered as a registered limited liability partnership shall be required to be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity and shall provide proof thereof. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or canceled at any time during the term of this Agreement. Failure by the Contractor to remain in compliance with the provisions of this section shall be deemed a material breach of this Contract. City of Hampton business license, personal property, real estate and other applicable tax requirements shall be met by Contractor.

#### Immigration Reform and Control Act of 1986

Contractor does not and shall not during the performance of this Contract knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

#### Venue:

Venue shall be in the Circuit Court of the City of Hampton, Virginia, and the United States District Court for the Eastern District of Virginia, Norfolk Division, compliant with applicable laws and regulations, as deemed appropriate by the City of Hampton. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, **or the United States District Court for the Eastern District of Virginia, Norfolk Division.**

#### Severability:

If any provision of this Contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Contract, and all other provisions of this Contract shall remain in full force and effect.

#### Non-Appropriation of Funds:

It is understood and agreed between the parties hereto that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Contract. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Contract, the City shall immediately notify Contractor of such occurrence and this Contract shall terminate on the last day of the fiscal year for which (an) appropriation(s) (was) were received without penalty or expense to the City of any kind whatsoever.

#### Tax Exemption:

The City of Hampton is exempt from federal excise tax and from all State and local taxes. Contractor shall not include such taxes in any invoices under this Contract. Upon request, the City will furnish the Contractor with tax exemption certificates or the City of Hampton's tax exempt number.

#### Vendor's Invoices:

Contractor shall submit to the City all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the Products and Services required under this Contract. Invoices shall not include any costs other than those identified in the executed City purchase order awarding this Contract or any subsequent change orders issued by the Consolidated Purchasing Division on behalf of the City. All shipping costs are the Contractor's responsibility, except to the extent such charges are identified in the executed City purchase order or change orders. Contractor's invoices shall provide at a minimum:

Type and description of the Product or Service installed, delivered and accepted;  
Serial numbers, if any;  
Quantity delivered;  
Charge for each item;  
Extended total (unit costs x quantity);  
This ITB number and City Purchase Order Number.

#### Contractual Disputes:

Any dispute concerning a question of fact as a result of a contract with the City of Hampton which is not disposed of by agreement shall be decided by the Purchasing Agent or designee, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days. The decision of Purchasing Agent or designee shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring

submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

#### Warranty/Guarantee:

Contractor guarantees against defective or faulty material or workmanship for at least one (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of acceptance by the City. To furnish adequate protection from damage for all work and to repair damages of any kind for which Contractor or Contractor's workmen are responsible, to the building or equipment, to Contractor's own work, or to the work of others. Any merchandise or service provided under this Contract which is or becomes defective during the warranty period shall be replaced by the Contractor free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year or manufacturer's standard warranty period, whichever is greater, from the date of acceptance of the replacement). Contractor shall make any such replacement immediately upon receiving notice from the City.

#### Payment Terms:

To be eligible for payment, all labor, equipment and materials covered under Contractor's invoice must be completed and accepted by the City. The City agrees to make payments under this Contract within thirty (30) days after receipt of a correct invoice for such payment. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due the City of Hampton under the terms of this or any other agreement may be applied against Contractor's invoices with documentation for the basis of the adjustment attached. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between the City and Contractor regarding the quantity, quality, time of delivery, or other noncompliance with this Contract requirement for any Product or Service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of 20 days or greater may be considered in the evaluation of bids. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Bidder shall be Net 45 days.

#### Special Educational or Promotional Discounts:

Contractor shall extend any special educational or promotional sale prices or discounts immediately to the City during the term of this Contract. Such notice shall also advise the duration of the specific sale or discount price.

**Contractor shall provide the City with its social security number or federal taxpayer identification number prior to receiving any payments for services under this Contract.**

#### Audits:

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least three years following the completion of this Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City, through its employees, agents, representatives, contractors or other designees, during normal business hours at Contractor's office or place of business in Hampton Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton, Virginia, which is convenient for the City of Hampton.

This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

#### Notice of Award:

Any contract resulting from this ITB will be publicly posted for inspection in the Consolidated Procurement Division, 1 Franklin Street, Suite 345, Hampton, Virginia.

#### Award:

The City intends to award a contract to the lowest responsible and responsive bidder. At the City's sole discretion, City may reject any or all bids in whole or in part if such action is determined to be in the City's best interest. The City reserves the right to enter into any contract deemed to be in its best interest, including the award of this contract to more than one contractor.

#### Disposition of Bids:

All materials submitted in response to this ITB will become the property of the City of Hampton. One (1) copy of each bid will be retained for official files, will become a matter of public record after award of the contract, and will be open to public inspection subject to the **Proprietary Information/Disclosure** section of this ITB.

**Exclusivity:**

Any contract resulting from this ITB shall be exclusive with the following exceptions:

City reserves the right to procure goods/services under this contract from a third party in the event of the following:

Contractor is unable to provide goods or required services within the required delivery time.

Contractor is unable to provide the required quantities of goods requested.

City of Hampton volume demands exceed original intent of the contract.

## **II. SPECIAL TERMS AND CONDITIONS**

**Contract Term:**

This Contract term shall be for (120) One hundred twenty days.

**Time is of the Essence:**

Time is of the essence in this Contract. Contractor expressly acknowledges that in the performance of its obligations, the City is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Contractor and may sustain substantial losses by reason of untimely performance.

**Insurance:**

Contractor shall submit to the City Contract Administrator Certificates of Insurance, prior to beginning work under this Contract and no later than ten (10) days after award of the Contract.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the City. **IT IS THE RESPONSIBILITY OF CONTRACTOR TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED OR MATERIALLY MODIFIED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THIS CONTRACT.**

The certificates of insurance shall list the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669, as the additional insured for the specified project as outlined in this ITB by policy endorsement. **The endorsement would be that which is attached to the policy that acknowledges the City as an also insured on all policies we have required to be endorsed. This will be either a direct endorsement that actually names the City or a blanket endorsement that the Contract states that the City will be named as an also insured on the insurance policy.**

Insurance shall be maintained during the entire Initial Term or any Renewal Term of this Contract and shall be of the following forms and limits:

<u>Forms</u>	<u>Limits</u>
Workers' Compensation	Statutory
Automobile Liability, including coverage for non-owned and hired vehicles	\$1,000,000 Combined Single Limit
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit
Umbrella/Excess Liability	\$2,000,000

The establishment of minimum limits of insurance by the City does not reduce or limit the liability or responsibilities of the Contractor.

**Unauthorized Disclosure of Information:**

Contractor shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its

subcontractors, agents or employees under or in connection with this Contract. The Contractor shall save harmless and indemnify the City and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. Contractor shall, upon written demand by the City, assume and defend, at the Contractor's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

Any negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with this Contract shall constitute a breach of the terms of this Contract. The City may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Contractor shall save harmless and indemnify the City for court costs, litigation expenses and reasonable attorney's fees that it may pay or incur as the result of seeking to prevent or stop any and all unauthorized disclosures of confidential information.

#### Cooperative Procurement

Section 2.2-4304 Code of Virginia (VPPA) will apply to this solicitation. Other Public Bodies may utilize any contract(s) issued pursuant to this solicitation by placing its own order(s) directly with the successful offeror(s). The City of Hampton acts only as the issuing agent and is not responsible for placement of orders, payment or discrepancies of other participating Public Bodies.

#### Criminal Background Check Requirements

Provider shall certify on Attachment E (or whatever attachment is used for certification form) that all employees employed in support of this Contract who have direct contact with students, which is defined to mean being in the presence of students during regular school hours or during school-sponsored activities, have not been convicted of (i) a felony; or (ii) any offense involving the sexual molestation, physical or sexual abuse or rape of a child.

#### Copyright/Patent Indemnity:

Contractor shall pay all royalty and license fees relating to the items covered by this Contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this Contract constitute an infringement of any copyright, trademark, or patent, the Contractor shall indemnify the City and hold harmless the City from any cost, expense, damage or loss incurred in any manner by the City on account of any such alleged or actual infringement.

#### FOREIGN AND DOMESTIC BUSINESSES-AUTHORITY TO TRANSACT BUSINESS IN THE COMMONWEALTH

**Contractor whether organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth** as a domestic or foreign business entity and shall provide proof thereof. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the Agreement. Failure by the Contractor to remain in compliance with the provisions of this section shall be deemed a material breach of this Agreement.

**ATTACHMENT A: PRICING SHEET**

Firm Fixed Price for the term of the contract

Item	Price Per Each Chair		Extended Total
001 – Provide and Install Upholstery Components for 750 fixed auditorium chairs with upholstered seats and backs per specifications or equivalent in ITB 17-10TM	\$ _____		\$ _____
Total			\$ _____

Company; \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**AGREEMENT  
BETWEEN  
CITY OF HAMPTON, VIRGINIA  
AND**

**ARTICLE I – IDENTIFICATION OF PARTIES**

This Agreement, made on this \_\_\_\_ day of \_\_\_\_\_ 2016, “Effective Date” by and between the City of Hampton, a municipal corporation of the Commonwealth of Virginia, located at 22 Lincoln Street, Hampton, Virginia 23669, the (“City”) and, \_\_\_\_\_ a \_\_\_\_\_ Corporation having a place of business at \_\_\_\_\_ the (“Contractor”). The City and Contractor shall be referred to jointly as the “Parties.”

It is mutually understood and agreed by the Parties hereto that the entire contents of RFP # \_\_\_\_\_ dated \_\_\_\_\_ Conditions of Contract (General, Special, and other conditions as they may be titled) and Intent to Award Letter, dated \_\_\_\_\_; (Exhibits “A”) and Contractor’s Response for Proposal dated \_\_\_\_\_; (Exhibit “B”) are incorporated herein by reference the same if each had been fully set out and attached hereto.

Witnesseth, that the Contractor and the City, in consideration of the mutual covenants contained herein with respect to the performance of professional services by the Contractor and the payment for those services by the City, the City and Contractor agree as set forth below:

**ARTICLE II – SCOPE OF SERVICES**

The Contractor shall perform services to the City in accordance with the professional standard of care and skill ordinarily possessed by a reputable provider of \_\_\_\_\_. Each Agreement shall reference a detailed scope of work for that specific project and include a fixed fee and completion date as specified in certain RFP # \_\_\_\_\_ and dated \_\_\_\_\_. In the event that a conflict exists between the referenced proposal of Consultant dated \_\_\_\_\_ and the terms of this Agreement, the terms of this Agreement shall govern and supersede any such conflicting terms of the proposal.

**ARTICLE III – PAYMENT FOR SCOPE OF SERVICES**

- A. In consideration of the work to be performed by Contractor, as set forth under Article II entitled Scope of Services, the City agrees to pay Contractor in accordance with the schedule of fees attached hereto as Exhibit “C” and as specified in the above referenced Contractor’s Response for Proposal dated \_\_\_\_\_.
- B. To obtain payment for work performed under this Agreement, if the Contractor is an individual, the individual Contractor shall provide his social security number. If the Contractor is a proprietorship, partnership, or corporation, the Contractor shall provide its federal employer identification number.

**ARTICLE IV – TIME COMPLETION**

- A. This Agreement shall commence on the Effective Date set forth in Article I herein, and shall continue in force for the term of 120 days.
- B. Time is of the essence in this Agreement. Contractor expressly acknowledges that in the performance of its obligations, the City is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Contractor and may sustain substantial losses by reason of untimely performance.

#### ARTICLE V - NON-ASSIGNMENT

Contractor shall not assign its rights and duties under this Agreement without the prior written consent of the City.

#### ARTICLE VI - APPLICABLE LAW/COMPLIANCE WITH ALL LAWS/PROMPT      PAYMENT/ VENUE

##### A. Applicable Law:

This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

##### B. Compliance with all Laws:

Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of scope work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Agreement prior to the initiation of work.

- C. Contractor does not and shall not during the performance of the Agreement knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

##### D. Payments to Subcontractors:

In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), Contractor shall make payment to all subcontractors, as defined in the Code, within seven (7) days after receipt of payment from the City; or, shall notify the City and subcontractors in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, Contractor shall pay interest at the rate of one percent (1%) per month, unless otherwise provided in the Agreement, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor.

Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this Article may not be construed to be an obligation of the City. Modification to this Agreement may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

##### E. Venue:

Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, **or the United States District Court for the Eastern District of Virginia, Norfolk Division.**

## ARTICLE VII - NONDISCRIMINATION

A. Employment discrimination by Contractor shall be prohibited. During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## ARTICLE VIII- DRUG FREE WORKPLACE

A. During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will provide a drug-free workplace for Contractor's employees.
2. Contractor will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
3. Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor vendor.

## ARTICLE IX - NON-APPROPRIATION - Availability of Funds

It is understood and agreed between the Parties hereto that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Agreement. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Agreement, the City shall immediately notify Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal year for which (an) appropriation(s) (was) were received without penalty or expense to the City of any kind whatsoever.

## ARTICLE X – TERMINATION OF AGREEMENT

### A. TERMINATION WITHOUT CAUSE

The City may at any time, and for any reason, terminate this Agreement by written notice to Contractor specifying the termination date, which shall be not less than ten (10) days from the date such notice is mailed.

Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Article I of this Agreement.

In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the City, at the time of termination.

If the City terminates this Agreement, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under this Agreement, and turn over to the City any work completed or in process for which payment has been made.

#### B. TERMINATION WITH CAUSE / DEFAULT / CANCELLATION

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Agreement, the City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Article I of this Agreement.

Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, the City may immediately cancel and terminate this Agreement as of the mailing date of the default notice.

Upon termination, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under the Agreement, and turn over to the City any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this Agreement may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

#### ARTICLE XI – OWNERSHIP OF DOCUMENTS/FREEDOM OF INFORMATION ACT

Ownership of all materials and documentation including the original drawings and the Plans and Specifications and copies of any calculations and analysis prepared pursuant to the Agreement between the City and the Contractor, shall belong exclusively to the City. Such materials and documentation, whether completed or not, shall be the property of the City of Hampton whether the Work for which they are made is executed or not. The Contractor shall not use these materials on any other work or release any information about these materials without the express written consent of the City.

Such material may be subject to public inspection in accordance with the Virginia Freedom of Information Act(the "ACT"). Security related documents and information are excluded from the Act unless a specific need to know can be shown. Trade secrets or proprietary information submitted by a bidder, offeror, or Contractor in connection with a procurement transaction shall not be subject to disclosure under the Act provided the bidder, offeror, or Contractor invokes the protections of §2.2-4342, Code of Virginia, prior to or upon submission of the data or other materials, identifies the data or materials to be protected and states the reason why the protection is necessary.

#### ARTICLE XII – HOLD HARMLESS – INDEMNIFICATION

##### General Responsibility of Contractor

As to all matters of liability related to or arising out of this Agreement other than professional liability, Contractor agrees to indemnify and hold harmless the City, its agents, volunteers, servants, employees and officials from and against any and all liability, losses, reasonable attorney's fees and litigation expenses, or other expenses suffered by any indemnified party or entity as a result of any claim to the extent that it is found to have been caused by the acts, errors, or omissions of Contractor or those for whom Contractor is legally liable.

With the prior approval of the City, Contractor may assume the defense of any such claim(s) made against the City, its agents, volunteers, servants, employees or officials.

### ARTICLE XIII – INSURANCE

Contractor shall submit to the City contract administrator certificates of insurance with applicable endorsements to the policy attached, prior to beginning work under this Agreement and no later than ten (10) days after award of the Agreement.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City.

The certificate of insurance shall list the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669, as the additional insured for the specified project as outlined in this RFP. The Endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the City as an additional insured on all policies the City is made an additional insured. This shall be either a direct Endorsement that actually names the City or a blanket Endorsement within the insurance policy that states that under a contractual agreement the City will be named as an also insured on the required insurance policy. Insurance shall be primary and the additional insured's primary coverage is non-contributory.

Insurance shall be maintained during the entire term of the Agreement and any extensions and shall be of the following forms and limits:

Forms	limits
workers' compensation	statutory
automobile liability	\$1,000,000 combined single limit
commercial general liability, including contractual liability and products and completed operations coverage	\$1,000,000 combined single limit
umbrella/excess liability	\$2,000,000

The establishment of minimum limits of insurance by the city does not reduce or limit the liability or responsibilities of the Contractor.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE AGREEMENT.

Should any of the above described policies be cancelled before the expiration date thereof, the [contractor/vendor/whomever] must provide notice to the City of Hampton Consolidated Procurement Division and Office of Risk Management within 30 days of receiving notification of expiration or cancellation. Failure to provide such notice will constitute a material breach of this Agreement.

### ARTICLE XIV – EXTENT OF AGREEMENT

This Agreement represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations or Agreements, either written or oral.

### ARTICLE XV - CONTRACTOR'S REIMBURSABLE EXPENSES

1. The Contractor's reimbursable expenses shall not include those incidental expenses such as supplies, utilities, which are a part of normal overhead costs.
2. Such expenses shall include those not normally a part of XV.1 and those relating directly to the scope of this Project. Examples of such shall include, but not be limited to reasonable travel, lodging, fees paid on behalf of the City when authorized by same, specification and drawing reproductions beyond the first two sets when authorized by the City, and overtime when authorized by the City.
3. Payment for reimbursable expenses shall be at cost, due monthly upon presentation of an invoice. The City reserves the right to request proof of such expense before payment.

### ARTICLE XVI - CONTRACTOR'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services on the Project and for services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on a generally recognized accounting basis and shall be available to the City or his authorized representative at mutually convenient times.

#### ARTICLE XVII - AUDITS

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City, through its employees, agents, representatives, Contractors or other designees, during normal business hours at Contractor's office or place of business in Hampton Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton.

#### ARTICLE XVIII - MODIFICATION

There may be no modification of this Agreement, except in writing, executed by the authorized representatives of the City and Contractor.

#### ARTICLE XIX- SEVERABILITY

If any part, term, or provision of this Agreement, shall be found by the Court to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity or any other provision or portion of the contract document.

#### ARTICLE XX- FOREIGN AND DOMESTIC BUSINESSES-AUTHORITY TO TRANSACT BUSINESS IN THE COMMONWEALTH

Contractor whether organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity and shall provide proof thereof. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the Agreement. Failure by the Contractor to remain in compliance with the provisions of this section shall be deemed a material breach of this Agreement.

#### ARTICLE XXI- FAITH BASED NON-DISCRIMINATION

THE CITY OF HAMPTON DOES NOT DISCRIMINATE AGAINST FAITH BASED ORGANIZATIONS AS THAT TERM IS DEFINED IN VIRGINIA CODE SECTION 2.2-4343.1.

#### ARTICLE XXII -REPRESENTATIVES AND NOTICES

Any notice, demand, or request by or made pursuant to this AGREEMENT shall be deemed properly made if personally delivered in writing or sent by the parties in the United States mail, postage paid, to the representative specified below or as otherwise designated in writing and mutually agreed.

The CITY's representation shall be :

\_\_\_\_\_

\_\_\_\_\_

The CONTRACTOR'S representation shall be:

\_\_\_\_\_

With a copy to: Lavinia Whitley  
Deputy Director Finance/Procurement  
City of Hampton  
1 Franklin Street, 3<sup>rd</sup> Floor  
Hampton, Virginia 23669

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONTRACTOR and the CITY.

**SIGNATURE OF PARTIES**

As evidence of their agreement to the terms and conditions set forth herein, the Parties affix their authorized signatures hereto:

**ATTEST: CITY OF HAMPTON**

\_\_\_\_\_  
City Clerk      (Signature) \_\_\_\_\_  
City Manager/Authorized Designee  
OFFICE OF CITY ATTORNEY  
Approved as to legal form and sufficiency  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Deputy City Attorney

**ATTEST: COMPANY NAME**

\_\_\_\_\_  
Corporate Secretary/Authorized Agent      By: \_\_\_\_\_  
Signature of Corporate Officer

Its: \_\_\_\_\_  
Title

STATE OF \_\_\_\_\_  
CITY/COUNTY OF \_\_\_\_\_, to-wit:  
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016

by \_\_\_\_\_, \_\_\_\_\_ (title) of \_\_\_\_\_, a \_\_\_\_\_ Corporation on its behalf.

He/She is personally known to me or has produced \_\_\_\_\_ as proper identification.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**ATTACHMENT C: Page 1 of 2**

**CITY OF HAMPTON, VIRGNIA and HAMPTON CITY PUBLIC SCHOOLS  
INSTRUCTIONS AND INFORMATION  
ON COMPLYING WITH CITY INSURANCE REQUIREMENTS**

This information is to assist the contractor to understand the insurance requirements of the City of Hampton (City) and Hampton City Public Schools (HCS). Contractors are encouraged to share this information with insurance agents and brokers. **In all cases the RFP or ITB requirements override statements in this document.**

**1. Agreement/Reference.** All evidence of insurance must identify the nature of your business with the CITY/HCS. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your insurance is properly assigned to the correct project. It is important that you **provide the types of coverage and minimum dollar amounts specified in the RFP or RFB document.** **Failure to provide the requested amounts may lead to disqualification and increase processing time.**

**2. When to submit.** Normally no work may begin until the certificate of insurance (COI) with proper endorsement has been received. It is important that the certificate and endorsement be provided as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

**3. Acceptable Evidence and Approval.** Proof of insurance is normally provided on an industry form known as the ACORD Certificate of Insurance. Insurance industry certificates other than the ACORD may be accepted after review. In addition to the ACORD form, an Insured Endorsement naming the CITY or HCS as an additional insured that has been completed by your insurance company or its designee must be attached to the COI. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured and the substantiating endorsement must be attached. Attaching the section of the insurance policy covering contractual additional insured may be used until the actual endorsement is received.

All evidence of insurance must be authorized for the insurance provider by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

**Acceptable Alternatives to ACORD Certificates and other Insurance Certificates:**

- **A copy of the full insurance policy.**
- **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days from date of approval.
- **Self-Insured** contractors or vendors must submit for review to the Risk Manager documentation of its financial ability to self-insure for each coverage required. (See Para 6 below.)

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law
- Professional Liability insurance

**4. Renewal.** Upon renewal of any insurance policy it is the responsibility of the contractor to provide the updated ACORD Certificate of Insurance or other acceptable documentation to the City or HCS. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.

**5. Cancellation.** The contractor/vendor must inform the City/HCS 30 days before insurance is cancelled or not renewed. The requirement for the insurance company to inform the additional insured is not enforceable. Failure to inform must be considered a substantive violation of the contract and could result in the contract being cancelled.



**6. Alternative Programs/Self-Insurance.** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY Risk Manager has reviewed the relevant documents. Any contractor or vendor that wishes to satisfy insurance requirements as a self-insured party must receive permission from the Risk manager by submitting a request to the Risk Management Department.

## **ATTACHMENT B: Page 2 of 2**

**7. General Liability.** General liability insurance covering your operations (and products, where applicable) is required whenever the CITY or HCS is at risk of:

- **Third-party claims** which may arise out of your work or your presence or special event on city premises.
- **Sexual misconduct claims coverage** is a required coverage when the work performed involves minors.
- **Fire legal liability insurance** is required for persons occupying a portion of CITY or HCS premises.

**8. Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY or HCS premises; it is not required for simple commuting unless CITY or HCS is paying mileage. However, compliance with Virginia law requiring auto liability insurance is a contractual requirement.

**9. Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

**10. Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law the minimum coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement that can be obtained from Risk Management.

**A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

**11. Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY.

**12. Builder's Risk/Course of Construction** is insurance coverage that protects the owner's interests in the structure as well as materials, fixtures and/or equipment being used in the construction or renovation of a building or structure should those items sustain physical loss or damage from a covered cause. It is required during construction projects and must include building materials in transit and stored at or away from the project site. This would also include materials purchased by the City for installation or erection by the contractor.

**13. Surety or Bond** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Fidelity Bond may be required to handle CITY funds or securities, and under certain other conditions. Specialty coverages may be needed for certain operations as outlined in the RFP or RFB

ATTACHMENT D:

**MINORITY AND WOMAN-OWNED BUSINESS PROGRAM**

The City of Hampton is implementing new strategies to solicit and utilize minority and woman-owned businesses. To encourage and sustain utilization of minority and woman owned businesses, subcontracting goals have been established for City contracts of \$100,000 and above. The minority and woman-owned subcontracting goals are established by business categories.